

Law Office of Jack Silver

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Via Electronic Mail
Judith.Harvey@usdoj.gov

February 26, 2013

Judy Harvey, Attorney
U.S. Department of Justice
Environment and Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Re: *Northern California River Watch v. City of Yreka*
USDC Case No.: 3:12-cv-05872 JSC

Dear Attorney Harvey:

In compliance with 33 U.S.C. § 1365(c)(3), we enclose for review by the Department of Justice a copy of the Settlement Agreement and Mutual Release of Claims entered into by the parties in resolution of the above-captioned matter.

Thank you for your consideration.

Sincerely,

Jerry Bernhaut

JB:lhm

Enclosure

cc: Melissa A. Thorme -Via Electronic Mail - mthorme@downeybrand.com
Dohn R. Henion- Via Electronic Mail - dhenion@charter.net

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between Northern California River Watch, a non-profit corporation, on behalf of itself and its members ("River Watch") and the City of Yreka, California, a general law city ("City"), (collectively the "Parties") as of the last date executed below (the "Effective Date,") with respect to the following facts and objectives.

RECITALS

WHEREAS, the City of Yreka, California has a population of 7,765 residents with a median household annual income of \$32,639. The City owns and operates the Yreka Wastewater Treatment Facility, WDID No. 1A84073OSIS, which includes wastewater collection, treatment, and disposal facilities ("WWTF") for municipal wastewater from the environs of the City of Yreka, and serves approximately 3,700 single-family equivalents. The City discharges treated effluent to land on a 31-acre subsurface effluent disposal area, located 800 feet north of the City's Wastewater Treatment Plant. The City also uses percolation ponds for excess flows during occasional high flow periods during the winter months. The City's sanitary sewer collection system consists of approximately 50 miles of gravity pipeline, pressure mains, 4 pump stations, interceptor lines, collection lines, cleanouts, and manholes.

WHEREAS, the City's WWTF is regulated under Waste Discharge Requirements Order No. R1-2003-0047, issued by the Regional Water Quality Control Board for the North Coast Regional ("Regional Board") on May 15, 2003. The City is also enrolled under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ, adopted by the State Water Resources Control Board on May 26, 2006, as amended by Order No. WQ 2008-0002-EXEC issued on February 20, 2008.

WHEREAS, on or about February 23, 2012, River Watch served the City with a Notice of Violations and Intent to File Suit under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 with regard to alleged violations of the Clean Water Act associated with the City's operation of its WWTF between October 26, 2006 and February 15, 2012, a copy of which is attached to this Agreement as Exhibit A. Communication between counsel for the Parties lead to the execution of a tolling agreement on June 27, 2012, staying the filing of litigation for ninety (90) days from the effective date of the tolling agreement. On September 25, 2012, counsel for River Watch conducted a site visit of the City's WWTF. On or about October 12, 2012, River Watch served the City with a Supplemental Notice of Violations and Intent to File Suit under Section 505 of the Clean Water Act for alleged violations between October 1, 2007 and October 1, 2012, a copy of

which is attached to this Agreement as Exhibit B. The original Notice and Supplemental Notice are referred to hereafter in this Agreement as the “Notices.”

WHEREAS, the Parties, through counsel, engaged in further negotiations, which subsequently led to a resolution of all claims and disputes made by River Watch as set forth in the Notices through settlement to avoid the cost and uncertainties of litigation;

WHEREAS, without either adjudication of River Watch’s claims as set forth in the Notices, or admission by the City of any alleged violation or other wrongdoing, the Parties agree that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving the claims that were, or could have been, asserted by River Watch based upon the Notices.

WHEREAS, River Watch has filed a first amended complaint (“Complaint”) against the City in the United States District Court, Northern District of California, on January 7, 2013 (this matter hereinafter referred to as “the Action”);

WHEREAS, for purposes of this Agreement, the Parties stipulate that venue is proper in this Court, and that City does not contest the exercise of jurisdiction by this Court to dismiss this matter with prejudice under the terms of this Agreement;

WHEREAS, this Agreement shall be submitted to the United States Department of Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall thereafter be submitted to the Court;

WHEREAS, after the Effective Date of this Agreement, River Watch shall submit a Notice of Settlement and inform the Court of the expected dismissal date;

WHEREAS, upon expiration of the statutory review period, the Plaintiff shall file a Notice of Dismissal with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the resolution of these claims and possible claims, the Parties agree to the following:

TERMS OF SETTLEMENT

I. DEFINITIONS

- A. **Condition Assessment:** A report that comprises inspection, rating, and evaluation of the existing condition of the WWTF's collection system. Assessments are based on closed circuit television (CCTV) inspections of gravity lines; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspections occur, pipe conditions shall be assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections. In the Condition Assessment, the City shall give priority to assessing sewer lines associated with the WWTF that are located within two hundred (200) feet of surface waters (e.g., Yreka Creek and Greenhorn Creek, and not including gutters, canals and storm drains).
- B. **Effective Date:** The last date on which the signature of a party to this Agreement is executed.
- C. **Significantly Defective:** A sewer pipe is considered to be Significantly Defective if the pipe's condition receives a grade of 4 or 5 based on the PACP rating system. PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

Grade	Description	Estimated Time to Failure
5	IMMEDIATE ATTENTION: Severe defects requiring immediate attention.	Has failed, or will likely fail within the next 5 years
4	POOR: Significant defects that will become grade 5 defects in the foreseeable future.	5 to 10 years
3	FAIR: Moderate defects that will continue to deteriorate.	10 to 20 years
2	GOOD: Minor to moderate defects that have not begun to deteriorate.	20 years or more
1	EXCELLENT: No or Minor Defects.	Unlikely in the foreseeable future

- D. WWTF Collection System: Any public system of pipes, pump stations, sewer lines, or other conveyances located within the City's boundary, owned and operated by the City, or used to collect and convey wastewater to the City's Disposal Facility. For the purposes of Assessment under this Agreement, the WWTF Collection System consists of gravity sewer main lines, manholes, and pump stations, and does not include private sewer laterals or other privately-owned sewage conveyances.
- E. Termination Date: The date when one of the following occurs, whichever is earlier:
- 1) Ten years from the Effective Date; or
 - 2) When the City completes the activities set forth in Section II. below, and has made payment pursuant to Section III.B.

II. REMEDIAL MEASURES

A. SEWER SYSTEM INVESTIGATION AND REPAIR

1. Within four (4) years from the Effective Date of this Agreement, the City shall complete a Condition Assessment of all sewer lines located within two hundred (200) feet of Yreka Creek and Greenhorn Creek that have not been CCTV'd, reconstructed, or rehabilitated within five (5) years prior to the Effective Date of this Agreement.
2. The City agrees that after the completion of the televising and grading activities described in II.A.1. above, the City will repair or replace, as needed, the gravity sewer main lines determined to be a grade of 5 within three (3) years and for lines assigned a grade of 4 within four (4) years.
3. With respect to sewer lines that receive a grade of 3 based on the PACP rating system, the City shall ascertain whether such lines need to be repaired or re-CCTV'd.
4. Within ten (10) years from the Effective Date of this Agreement, the City shall complete a Condition Assessment of the remaining gravity sewer lines in the City's WWTF Collection System that are located more than two hundred (200) feet from Yreka and Greenhorn Creeks, except for sewer lines which have been CCTV'd within ten (10) years prior to the Effective Date of this Agreement, or which have been repaired, replaced or newly installed within twenty (20) years prior to the Effective Date of this Agreement, or will have been rehabilitated within ten (10) years after the Effective Date.

B. SEWER SYSTEM OVERFLOW RESPONSE

1. Within one (1) year from the Effective Date of this Agreement, the City shall modify its Sanitary Sewer Overflow (SSO) report form to include the following additional information:

a. The method or calculations used for estimating total spill volume, spill volume reaching surface waters, and spill volume recovered (which may include the San Diego Method, if applicable to the SSO, or other method).

b. A listing of nearby residents or business operators contacted to attempt to establish the SSO's start time, duration, and flow rate.

c. Photographs of the manhole flow at the SSO site; or, other photographic evidence that may aid in establishing the spill volume.

2. Within one (1) year of the Effective Date of this Agreement, the City shall require water quality sampling and testing for total and fecal coliform whenever an SSO, which is estimated to be fifty (50) gallons or more, enters surface waters. The City shall collect and test samples from three (3) locations: the point of discharge to the surface water, upstream of the point of discharge to the surface water, and downstream of the point of discharge to the surface water.

a. If any of the sampled constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the City shall determine and address the cause of the SSO that enters surface waters, and shall employ the following measures to prevent future overflows: (i) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (ii) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the non-structural defect.

b. In addition to the required sampling above, the City shall sample for ammonia and conduct a metals analysis¹ for two (2) Category I SSO events that reach surface waters occurring in the first two years of this Agreement. If only one Category I SSO occurs during the first two years of this Agreement, then that SSO will be sampled. If there are no Category I SSO events during the first two years of this Agreement, then no additional analysis is required under this paragraph.

¹ The following 17 metals will be sampled using EPA Part 136 approved methods: Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cobalt, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, Silver, Thallium, Vanadium, and Zinc.

C. PRIVATE LATERAL INSPECTION AND REPAIR ORDINANCE

1. Within two (2) years of the Effective Date of this Agreement, the City staff shall draft and present to the City Council a mandatory private sewer lateral inspection and repair ordinance triggering inspection and/or repair of a private lateral by the property owner due to any of the following events:

a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer.

b. The occurrence of 2 or more SSOs caused by the same private sewer lateral within 2 years that the City is aware of.

c. A change of the use of the structure served from residential to business, commercial, or other non-residential use; or from non-residential, non-restaurant, non-noncommercial, non-industrial to restaurant, commercial, or industrial use.

d. The installation of additional plumbing fixtures that produce a major increase in sewage flows from the house, building, property or other structure served.

e. The re-initiation of service where the structure served has been vacant/unoccupied for more than 3 years.

f. Upon replacement or repair of any part of the sewer lateral, or upon significant repair or replacement of the main sewer line connected to the lateral, where evidence exists of issues related to the connected lateral (e.g., roots from the private lateral visible in the lower lateral or main sewer line, visible offsets or damage).

g. Upon issuance of a building permit for a significant remodel with a valuation of \$90,000 or more that will result in a substantial increase in flow, except if inspection, repair or replacement of the sewer lateral has occurred in the last twenty (20) years, or except if lateral was installed within last ten (10) years;

D. FACILITY AUDIT

1. Within three (3) months from the Effective Date of this Agreement, the City shall initiate a Request for Proposals ("RFP") to conduct an audit of its wastewater treatment and collection facilities. The City shall fund this audit, and the cost of the audit shall not exceed five thousand (5,000) dollars. The RFP and the selection of the environmental auditor shall be subject to the approval of the Parties. Approval shall not be unreasonably withheld. Results of the audit shall be completed within one year from

the Effective Date and shall be provided to River Watch within five (5) business days of receipt by the City of the final audit from the auditor.

E. ANNUAL REPORT PROVISION

1. Within fourteen (14) days after March 15 of each year, when the City files its SSO Annual Report with the California Regional Water Quality Control Board, the City shall provide a copy of the SSO Annual Report to River Watch.

2. Upon completion of all tasks described in Sections II. A, B, C and D above, the City shall cease providing annual copies of its SSO Annual Report to River Watch.

III. PAYMENT OF FEES AND COSTS AND DISMISSAL OF CASE

A. Within five (5) business days of Effective Date of this Agreement, River Watch shall submit this Agreement to the United States Department of Justice ("DOJ") for the statutory 45-day agency review period set forth in 33 U.S.C. §1365(c) and submit a Notice of Settlement to the federal District Court.

B. Within thirty (30) days after the Effective Date of this Agreement, the City shall pay River Watch the sum of \$35,000.00 representing full satisfaction of all claims by River Watch's for its investigative, expert, and attorneys' fees and costs. Payment shall be made in the form of a single check payable to "Northern California River Watch," mailed to the Law Office of Jack Silver, P.O. Box 5469, Santa Rosa CA 95402, and shall constitute full and complete payment for all costs of anticipated litigation and attorneys' fees and costs incurred by River Watch in connection with this matter up to and including the Termination Date of the Agreement, and for attorneys' fees and costs incurred for monitoring and enforcing the City's compliance with this Agreement, with the exception of any action taken to enforce this Agreement by way of arbitration.

C. Within seven (7) days of the expiration of the agency review period discussed in Section III.A., River Watch shall file with the federal District Court a Notice of Dismissal whereby the Complaint and all claims therein shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

IV. NO ADMISSION OR FINDING

A. Neither this Agreement nor any payment pursuant to the Agreement shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this Agreement and/or any payment pursuant to the Agreement

may constitute evidence in actions seeking compliance with this Agreement.

V. RELEASE OF CLAIMS

A. Upon the Effective Date of this Agreement, River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter, agrees that it releases, acquits and forever discharges the City, its elected and appointed officials, officers, employees, agents, attorneys, legal successors and assigns, and any other person acting on the City's behalf, from all Clean Water Act claims and demands, actions, causes of action, obligations, except for obligations under this Agreement, liabilities, indebtedness, breach of duty, claims for injunctive relief and other equitable relief, suits, liens, damages, losses, costs or expenses, including attorneys' fees, except for costs and fees pursuant to Section III above, known or unknown, fixed or contingent, liquidated or unliquidated, suspected or unsuspected, foreseen or unforeseen, based upon the claims alleged, or which could have been alleged, in the Notices under the Clean Water Act, including without limitation, any and all claims for violations of the Clean Water Act, which occurred at any time up to the Effective Date of this Agreement.

B. The Parties acknowledge that they are familiar with section 1542 of the California Civil Code. Each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

C. The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

VI. COVENANT NOT TO SUE

A. For a period of five (5) years following the Effective Date of this Agreement, River Watch agrees that neither River Watch, nor its officers, executive staff, members of its governing board, nor any organization under the control of River Watch, its officers, executive staff, members of its governing board, will serve any Notice of Violations and

Intent to Sue or file any lawsuit against the City seeking relief for alleged violations of the Clean Water Act or the Resource Conservation and Recovery Act, Endangered Species Act, or any similar state statutes and/or regulations, including the Porter Cologne Water Quality Control Act, pertaining to the City's operation of its wastewater treatment, collection, and disposal facilities and municipal separate storm sewer system facilities, nor will River Watch initiate or support such lawsuits against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions. For the period beyond five (5) years from the Effective Date of this Agreement and through the Termination Date of this Agreement, River Watch agrees that neither River Watch, its officers, executive staff, members of its governing board nor any organization under the control of River Watch will file a complaint or serve any new 60-day Notice Letter pertaining to any matter that is the subject of any pending relief agreed to by the City as a provision of this Agreement that has not been completed.

VII. FORCE MAJEURE

A. Separate from, and in addition to any other limitations on the City's obligations under this Agreement, the City's obligation to comply with one or more of the provisions of this Agreement shall be excused or deferred to the extent and for the duration that the delay in compliance is caused by an event or circumstances beyond the reasonable control of the City or any entity controlled by the City, including its contractors, and, that could not have been reasonably foreseen and prevented by the exercise of due diligence by the City. Where implementation of the actions set forth in this Agreement, within the deadlines prescribed, becomes unachievable, despite the timely good faith efforts of the City, the City shall notify River Watch in writing within thirty (30) days of the date that the City knew of the event or circumstance precluding compliance, and shall describe the reason for the non-performance. The Parties agree to meet and confer in good faith concerning the non-performance and, where the Parties concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the Parties, compliance shall be excused or new performance deadlines shall be established by agreement of the parties. In the event that the Parties cannot timely agree, either party shall have the right to invoke the dispute resolution procedure described herein.

VIII. DISPUTE RESOLUTION PROCEDURES

A. Any disputes with respect to any of the provisions of this Agreement shall be resolved through the following procedure. The Parties covenant and agree, that if either party determines the other is in violation of one or more terms of this Agreement, the party shall provide notice to the other in writing of what actions or inactions they deem to be in violation of this Agreement. Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to the notice in writing. If the Parties still dispute

compliance with the Agreement, within an additional thirty (30) days the Parties will meet and confer in a good faith attempt to resolve their dispute. If the Parties cannot informally resolve the dispute, they will enter into binding arbitration, conducted by an arbitrator agreed to by the Parties. Either party may request the presiding Judge of the Siskiyou County Superior Court to select an arbitrator if the Parties cannot reach agreement. The arbitration shall be binding and not subject to appeal; however, it shall be subject to the procedural provisions provided for under California Code of Civil Procedure sections 1280, *et seq.*. The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS (Judicial Arbitration and Mediation Service), Endispute, or other conventional rules agreed to by the Parties. The relief the arbitrator is empowered to award is limited to injunctive relief to take action specified in this Agreement, and the arbitrator shall be empowered to determine a prevailing party and award payment of reasonable attorneys' fees and costs to that party. To the extent there are multiple issues with a different prevailing party for one or more issues, the arbitrator may take those facts into account in terms of an award for fees and costs, and can order each party to bear its own costs.

B. If River Watch asserts the City is in violation of this Agreement, and the City corrects the action or inaction within sixty (60) days of written notice from River Watch describing the asserted violation, no further enforcement action under the terms of this Agreement shall be taken by either party.

IX. GENERAL PROVISIONS

A. Notices - Unless otherwise provided herein or until the Parties otherwise agree in writing, all communications and notice between the Parties regarding this Agreement shall be made through regular, certified or overnight mail and/or electronically to the following physical and email addresses:

For the City:

Steven W. Baker
City Manager
City of Yreka
701 Fourth Street
Yreka, CA 96097
sbaker@ci.yreka.ca.us

With copies to:

Dohn R. Henion
Yreka City Attorney
P.O. Box 886
Crescent City, CA 95531
(707) 464-9761
dhenion@charter.net

and

Melissa A. Thorme
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
Telephone: (916) 444-1000
Facsimile: (916) 444-2100
mthorme@downeybrand.com

For River Watch:

Northern California River Watch
Attn: Larry J. Hanson, Program Director
P.O. Box 817
Sebastopol, CA 95472

With a Copy to:

Jerry Bernhaut, Attorney at Law
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. (707) 528-8175
Email: lh28843@sbcglobal.net
Email: j2bernhaut@yahoo.com

B. Entire Agreement - This Agreement is an integrated agreement and constitutes the entire agreement between the Parties. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise

changed by oral communication of any kind or character. This Agreement is intended to be a full and complete statement of the terms of the agreement between the Parties and expressly supersedes all previous agreements whether written or oral, that may have been reached between the Parties in connection with this matter and provides the sole remedy from any party to any other party regarding this matter.

C. Advice of Attorneys - This Agreement is entered into by each party freely and voluntarily. Each party has had the benefit of advice of counsel of its choice in the negotiating, drafting and executing of this Agreement, and the language in all parts of this Agreement is the product of the efforts of all counsel. Accordingly, neither the entire Agreement nor any provision in it shall be deemed to have been proposed or drafted by a party or construed against any party.

D. Governing Law/Construction of Agreement - This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the United States and, where applicable, the State of California. The language in all parts of this Agreement shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the Clean Water Act, or specifically herein. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but rather, this Agreement shall be construed as if it did not contain the illegal part, and the remaining rights and obligations of the Parties shall be construed and enforced accordingly.

E. Authority of Representation - Each party respectively represents and warrants to each other, that the undersigned representative for such party has full and complete authority to execute this Agreement and bind said party to the terms hereof.

F. Counterparts/Electronic and/or Facsimile Signatures - This Agreement may be executed in any number of counterparts with each counterpart being interpreted as an original, and all of which, taken together shall constitute one and the same instrument. A party's execution page transmitted by facsimile or electronic mail may be used as though it were an original signature notwithstanding the fact that the party did not provide an original signature.

G. No Third Party Beneficiaries - This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

SO AGREED:

Dated: February __, 2013

NORTHERN CALIFORNIA RIVER WATCH

By: _____
Margaret Bacigalupi, Board President

SO AGREED:

Dated: February __, 2013

CITY OF YREKA


By: _____
Steven W. Baker, City Manager

APPROVED AS TO FORM:

Dated: February __, 2013

Jerry Bernhaut
Attorney for Northern California River Watch

Dated: February 22, 2013



Melissa A. Thorne
Special Counsel for City of Yreka

SO AGREED:

Dated: February 23, 2013

NORTHERN CALIFORNIA RIVER WATCH

By: 

Margaret Bacigalupi, Board President

SO AGREED:

Dated: February __, 2013

CITY OF YREKA

By: _____

Steven W. Baker, City Manager

APPROVED AS TO FORM:

Dated: February __, 2013

Jerry Bernhaut

Attorney for Northern California River Watch

Dated: February 22, 2013



Melissa A. Thorne

Special Counsel for City of Yreka

SO AGREED:

Dated: February __, 2013

NORTHERN CALIFORNIA RIVER WATCH

By: _____
Margaret Bacigalupi, Board President

SO AGREED:


Dated: February __, 2013

CITY OF YREKA


By: _____
Steven W. Baker, City Manager

APPROVED AS TO FORM:

Dated: February 25, 2013


Jerry Bernhaut
Attorney for Northern California River Watch

Dated: February 22, 2013


Melissa A. Thorne
Special Counsel for City of Yreka

SO AGREED:

Dated: February ___, 2013

NORTHERN CALIFORNIA RIVER WATCH

By: _____
Margaret Bacigalupi, Board President

SO AGREED:

Dated: February 25, 2013

CITY OF YREKA

By: 
Steven W. Baker, City Manager

APPROVED AS TO FORM:

Dated: February ___, 2013

Jerry Bernhaut
Attorney for Northern California River Watch

Dated: February 22, 2013

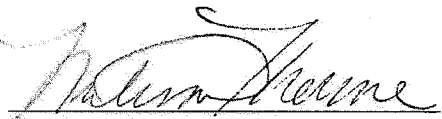

Melissa A. Thorne
Special Counsel for City of Yreka

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



February 23, 2012

***Via Certified Mail -
Return Receipt Requested***

Charles Cossey
Wastewater Treatment Plant Manager
City of Yreka
856 North Main Street
Yreka, CA 96097

Steven W. Baker
City Manager
City of Yreka
701 Fourth Street
Yreka, CA 96097

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Head of Operations:

NOTICE

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), [33 U.S.C. § 1365(a),] a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

This letter serves as notice on behalf of Northern California River Watch ("River Watch") that River Watch hereby places the City of Yreka, ("the Discharger") on notice that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), [33 U.S.C. § 1365(a)(1),] the Code of Federal Regulations, and the Regional Water Quality Control Board's "Basin Plan, as exemplified by the incidents of non-compliance with the CWA by the Discharger, identified and outlined below.

INTRODUCTION

The CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA § 402, which allows the discharge of designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates, satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (SWRCB) and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region (RWQCB).

The Discharger owns and operates wastewater collection, treatment, and disposal facilities ("WWTF") for municipal wastewater from the City of Yreka. The Discharger discharges treated effluent to a 31-acre, subsurface, drip disposal field (Disposal Facility) located 800 feet north of the WWTF in NW¼ Section 14, T45N, R7W. The Discharger uses percolation ponds for excess flows during high inflow periods. The Discharger's wastewater collection system consists of approximately 50 miles of gravity pipeline, pressure mains, 4 pump stations, interceptor lines, collection lines, cleanouts, and manholes.

On May 15, 2003, the RWQCB issued Waste Discharge Requirements (WDRs) Order No. R1-2003-0047, governing discharges associated with the Discharger's WWTF, sewer collection system, and Disposal Facility.

On May 2, 2006, the SWRCB adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies (General WDRs). On October 26, 2006, the Discharger enrolled for coverage under the General WDRs.

Four percolation ponds located adjacent to the WWTF, are used as the primary, pre-upgrade effluent disposal facilities. The WWTF, Disposal Facility and percolation ponds are located adjacent to Yreka Creek.

Post-upgrade design specifications indicate a dry weather (June through October) flow treatment capacity of 1.3 million gallons per day (mgd). The Disposal Facility was designed to accommodate 1.3 mgd. The percolation ponds provide additional disposal capacity. Although the average influent wastewater flows do not exceed the design capacity, single-day highest flows often do by a factor of 3 or 4.

The proximity of the WWTF and Disposal Field to Yreka Creek will continue to be a concern regarding the potential for the contribution of pollutants including metals, endocrine disruptors and biostimulants (nutrients) to the Creek. The discharge of pollutants from the percolation ponds to Yreka Creek constitute a violation of the CWA.

The Basin Plan for the North Coast Region includes water quality objectives, implementation plans for point source and non-point source discharge prohibitions and statewide plans and policies. The Basin Plan prohibits discharges to Klamath River and its tributaries except as provided in the Action Plan for Storm Water Discharges.

Beneficial uses for Yreka Creek, Shasta River, and Klamath River include: municipal, agricultural and industrial water supply; groundwater recharge; freshwater replenishment; contact water recreation; non-contact water recreation; warm-freshwater, cold-freshwater and wildlife habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; commercial and sport fishing; and, aquaculture.

The Discharger has a history of sewer system overflows (SSOs) from its aging sewer lines. As recorded in the SWRCB, California Integrated Water Quality System (CIWQS) Interactive SSO Reports, the Discharger's collection system experienced numerous SSOs between October 26, 2006 and February 15, 2012.

Structural defects in the Discharger's collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines is a contributing factor in SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters – all waters of the United States. In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, have verified the contamination of the adjacent waters with untreated sewage. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the Discharger's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The Discharger's chronic collection system failures pose a substantial threat to public health.

Under the Basin Plan any point source discharge of sewage effluent to waters of the United States must comply with technology-based, tertiary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

The Discharges as described herein constitute a nuisance, and are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal or treatment of wastes.

The Discharger's collection system operations are not regulated under a NPDES Permit, but are currently regulated under the Statewide General WDRs adopted on May 2, 2006.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of raw sewage from the Discharger's wastewater treatment plant collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives above describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the SWRCB's CIWQS SSO Public Reports and other public documents in the Discharger's possession or otherwise available to the Discharger, and incorporates by reference records cited above from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations is the City of Yreka, identified throughout this Notice as the "Discharger".

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records created and/or maintained by or for the Discharger which relate to the Discharger's wastewater treatment plant and associated sewage collection system located in the City of Yreka, as further described in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records of the RWQCB as to the Discharger and the WWTF for the period from October 26, 2006 to February 15, 2012, therefore, the range of dates covered by this Notice is October 26, 2006 to February 15, 2012. River Watch will update this Notice from time to time to include all violations which occur after the range of dates currently covered by this Notice.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, E-mail US@ncriverwatch.org, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

VIOLATIONS

River Watch contends that from October 26, 2006 to February 15, 2012, the Discharger has violated the CWA, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its sewage collection system without a NPDES permit. The below-listed violations are reported by RWQCB staff, and evidenced by the SWRCB's CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

<u>Violations</u>	<u>Description</u>
-------------------	--------------------

- | | |
|-------------|--|
| 1800 | Collection system overflows caused by underground exfiltration. This is an event in which untreated sewage is discharged from the collection system prior to reaching the WWTF. Underground discharges are alleged to have been continuous throughout the period from October 26, 2006 to February 15, 2012. Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the WWTF reported in the Discharger's records, video inspection of the collection system, and testing of waterways adjacent to sewer lines, creeks and wetlands for human markers, nutrients, pathogens and other constituents indicating sewage contamination. |
| 1800 | Percolation Pond discharges caused by underground exfiltration. This is an event in which untreated or partially treated sewage is discharged from the percolation ponds to Yreka Creek. Underground discharges are alleged to have been continuous throughout the period from October 26, 2006 to February 15, 2012. Evidence to support the allegation of underground discharge of sewage exists in the Discharger's own mass balance data and testing of waterways adjacent to the ponds for nutrients, pathogens and other constituents indicating sewage contamination. |

- 45 **SSOs.** As evidenced in the SWRCB's CIWQS Interactive SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the Discharger's ongoing non-compliance with the CWA:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:
 - a. The amendment of the Risk Assessment Plan in the Discharger's Sewage System Management Plan, to specify that defective sewer lines located within 150 feet of surface waters, including drainage channels and creeks, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more than 150 feet from surface waters. Said prioritization will be consistent with information provided by the Discharger's Flow Monitoring and Inflow/Infiltration Study completed in June 2009. The Discharger's CCTV Program shall prioritize the televising of sewer lines identified by the Flow Monitoring and Inflow/Infiltration Study completed in 2009 as necessary to assess the exact location of I/I sources.
 - b. The provision of funding in the Discharger's Capital Improvements Plan to CCTV all gravity sewer lines every 10 years, except for lines CCTV'd within the prior 10 years, and lines constructed, replaced or repaired within the prior 20 years.
2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
 - a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer.
 - b. The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years.
 - c. A change of the use of the structure served (1) from residential to non-residential uses, (2) to a non-residential use which will result in a higher flow than the current non-residential use, and (3) non-residential uses where the structure served has been vacant/unoccupied for more than 3 years.
 - d. Upon replacement or repair of any part of the sewer lateral.

- e. Upon issuance of a building permit with a valuation of \$25,000.00 or more.
 - f. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
- 3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to state waters, including a more detailed account of SSOs and remedial actions, with sufficient information to verify and document SSOs start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions including whether any chemical agents were used.
 - 4. Creation of web site capacity to track information regarding SSOs. In the alternative, a link from the Discharger's web site to the SWRCB's CIWQS SSO Public Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
 - 5. Performance of human marker sampling on creeks, rivers, wetlands and areas adjacent to sewer lines, to test for sewage contamination from underground exfiltration.
 - 6. Placement of monitoring wells between the percolation ponds and Yreka Creek. Reconstruction of percolation ponds to eliminate discharge of pollutants through hydrologically connected ground water.

CONTACT INFORMATION

River Watch has retained legal counsel with respect to the issues raised and violations of the CWA as alleged in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed communities. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. The members' health, use and enjoyment of these natural resources is specifically impaired by the Discharger's alleged violations of the CWA as set forth in herein.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations alleged in this Notice.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the Discharger wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 60-day notice period ends

Very truly yours,


Jack Silver

JS:lhbm

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
US. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-100

City Attorney
City of Yreka
701 Fourth Street
Yreka, CA 96097

EXHIBIT B

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***Via Certified Mail -
Return Receipt Requested***

October 12, 2012

Charles Cossey
Wastewater Treatment Plant Manager
City of Yreka
856 North Main Street
Yreka, CA 96097

Steven W. Baker
City Manager
City of Yreka
701 Fourth Street
Yreka, CA 96097

Re: Supplemental Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Heads of Operations:

NOTICE

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

This letter serves as notice on behalf of Northern California River Watch ("River Watch") that River Watch hereby places the City of Yreka, ("the Discharger") on notice that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Basin Plan, as exemplified by the incidents of non-compliance with the Clean Water Act by the Discharger, identified and outlined below.

INTRODUCTION

The CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA § 402, which allows the discharge of designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens’ suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates, satisfies certain criteria. *See* 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region (“RWQCB”).

The Discharger owns and operates wastewater collection, treatment, and disposal facilities (“WWTF”) for municipal wastewater from the City of Yreka. The Discharger discharges treated effluent to a 31-acre, subsurface, drip disposal field (“Disposal Facility”) located 800 feet north of the WWTF in NW¼ Section 14, T45N, R7W. The Discharger uses subsurface cleaning screens for excess flows during high inflow periods. The Discharger’s sewer collection system consists of approximately 48 miles of gravity pipeline, 1.7 miles of pressure sewers, 4 pump stations, interceptor lines, collection lines, cleanouts, and manholes.

On May 15, 2003, the RWQCB issued Waste Discharge Requirements (“WDR”) Order No. R1-2003-0047, governing discharges associated with the Discharger’s WWTF, sewer collection system, and Disposal Facility.

On May 2, 2006, the SWRCB adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies (“General WDRs”). On October 26, 2006, the Discharger enrolled for coverage under the General WDRs.

The WWTF/Disposal Facility is located adjacent to Yreka Creek which flows into both the Shasta and Klamath Rivers.

Post-upgrade design specifications indicate a dry weather (June through October) flow treatment capacity of 1.3 million gallons per day (mgd). The Disposal Facility was designed to accommodate 1.3 mgd. The percolation ponds provide additional disposal capacity. Although the average influent wastewater flows do not exceed the design capacity, single-day highest flows often do by a factor of 3 or 4.

The proximity of the WWTF to Yreka Creek will continue to be a concern regarding the potential for the contribution of pollutants including metals, endocrine disruptors and biostimulants (nutrients) to the Creek. The discharge of pollutants from the Disposal Facility and the percolation ponds to Yreka Creek constitutes a violation of the CWA.

The Basin Plan for the North Coast Region includes water quality objectives, implementation plans for point source and non-point source discharge prohibitions and statewide plans and policies. The Basin Plan prohibits discharges to Klamath River and its tributaries except as provided in the Action Plan for Storm Water Discharges.

Beneficial uses for Yreka Creek, Shasta River, and Klamath River include: municipal, agricultural and industrial water supply; groundwater recharge; freshwater replenishment; contact water recreation; non-contact water recreation; warm-freshwater, cold-freshwater and wildlife habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; commercial and sport fishing; and, aquaculture.

The Discharger has a history of sewer system overflows (“SSOs”) from its aging sewer lines. As recorded in the SWRCB, California Integrated Water Quality System (“CIWQS”) Interactive SSO Reports, the Discharger’s sewer collection system experienced numerous SSOs between October 1, 2007 and October 1, 2012.

Structural defects in the Discharger’s sewer collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines, is a contributing factor in SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters – all waters of the United States. In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, have verified the contamination of the adjacent waters with untreated sewage. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the Discharger’s sewer collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The Discharger’s chronic sewer collection system failures pose a substantial threat to public health.

Under the Basin Plan, any point source discharge of sewage effluent to waters of the United States must comply with technology-based, tertiary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

The Discharges as described herein constitute a nuisance, and are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal or treatment of wastes.

The Discharger's sewer collection system operations are not regulated under a NPDES permit, but are currently regulated under the Statewide General WDRs adopted on May 2, 2006.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of raw sewage from the Discharger's WWTF to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives above and further in this Notice, describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the SWRCB's CIWQS SSO Public Reports and other public documents in the Discharger's possession or otherwise available to the Discharger, and incorporates by reference records cited from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations is the City of Yreka, identified throughout this Notice as the "Discharger".

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records created and/or maintained by or for the Discharger which relate to the Discharger's WWTF and associated sewer collection system located in the City of Yreka, as further described in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records of the RWQCB as to the Discharger and the WWTF for the period from October 1, 2007 to October 1, 2012. Therefore, the range of dates covered by this Notice is October 1, 2007 to October 1, 2012. River Watch will update this Notice from time to time to include all violations which occur after the range of dates currently covered by this Notice.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, E-mail US@ncriverwatch.org, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel with respect to the issues raised and violations of the CWA as alleged in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
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VIOLATIONS

River Watch contends that from October 1, 2007 to October 1, 2012, the Discharger has violated the CWA, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its WWTF without a NPDES permit. The below-listed violations are reported by RWQCB staff, and evidenced by the SWRCB's CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

Violations	Description
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- | | |
|-------------|---|
| 1800 | Collection system overflows caused by underground exfiltration. This is an event in which untreated sewage is discharged from the sewer collection system prior to reaching the WWTF. Underground discharges are alleged to have been continuous throughout the period from October 1, 2007 to October 1, 2012. Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the WWTF reported in the Discharger's records, video inspection of the sewer collection system, and testing of waterways adjacent to sewer lines, creeks and wetlands for human markers, nutrients, pathogens and other constituents indicating sewage contamination. |
| 1800 | Subsurface discharge system and Percolation Pond discharges caused by underground exfiltration. This is an event in which untreated or partially treated sewage is discharged from the percolation ponds to Yreka Creek. Underground discharges are alleged to have been continuous throughout the period from October 1, 2007 to October 1, 2012. Evidence to support the allegation of underground discharge of sewage exists in the Discharger's own mass balance data and testing of waterways adjacent to the ponds for nutrients, pathogens and other constituents indicating sewage contamination. |
| 45 | SSOs. As evidenced in the SWRCB's CIWQS Interactive SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents. |

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the Discharger's ongoing non-compliance with the CWA:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:
 - a. The amendment of the Discharger's Sewage System Management Plan to specify that defective sewer lines located within 150 feet of surface waters, including drainage channels and creeks, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more than 150 feet from surface waters.

- b. The provision of funding in the Discharger's Capital Improvements Plan to CCTV all gravity sewer lines every 10 years, except for lines CCTV'd within the prior 10 years, and lines constructed, replaced or repaired within the prior 20 years.
- 2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
 - a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer.
 - b. The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years.
 - c. A change of the use of the structure served (1) from residential to non-residential uses, (2) to a non-residential use which will result in a higher flow than the current non-residential use, and (3) non-residential uses where the structure served has been vacant/unoccupied for more than 3 years.
 - d. Upon replacement or repair of any part of the sewer lateral.
 - e. Upon issuance of a building permit with a valuation of \$25,000.00 or more.
 - f. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
- 3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to state waters, including a more detailed account of SSOs and remedial actions, with sufficient information to verify and document SSOs start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions including whether any chemical agents were used.
- 4. Creation of web site capacity to track information regarding SSOs. In the alternative, a link from the Discharger's web site to the SWRCB's CIWQS SSO Public Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
- 5. Performance of human marker sampling on creeks, rivers, wetlands and areas adjacent to sewer lines, to test for sewage contamination from underground exfiltration.

6. Monthly monitoring of all monitoring wells surrounding subsurface disposal and ponds when the ponds are used for disposal or storage.

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed communities. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. The members' health, use and enjoyment of these natural resources is specifically impaired by the Discharger's alleged violations of the CWA as set forth in herein.

Very truly yours,



Jack Silver

JS:lhbm

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
US. Environmental Protection Agency Region 9
75 Hawthorne St.
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